

The University of Chicago

THE REGULATION OF TRANSPORTATION RATES

A PART OF A DISSERTATION SUBMITTED TO THE
FACULTY OF THE DIVISION OF THE SOCIAL
SCIENCES IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

DEPARTMENT OF ECONOMICS
1936

By
HARRY LESLIE PURDY

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The Regulation of Transportation Rates

By HARRY L. PURDY

IN THE general field of industry the competition of private firms has been relied on for the creation of adequate production at reasonable and non-discriminatory prices. It is assumed that under pressure from competitors the individual producer must seek relatively efficient methods of production and must sell his product at prices that do not yield abnormally large returns over the long run. In contrast, in the transportation field the recognized weakness of competitive control has led, over a period of years, to extensive government regulation of the industry. Competitive pricing by private management has given way in large measure to price fixing through commission control.

The need for public controls in the railroad field did not arise from the functional failure of competition but from the presence of a mixture of monopoly and competitive conditions that rendered competitive control of the industry impracticable. In 1885 competition was pictured by the Cullom Committee as existing only at important commercial centers. As a result, the large number of non-competitive interior points suffered unreasonable and discriminatory rates.¹

RECENT TRANSFORMATION OF COMPETITION

In recent years the state of competition in transportation has undergone revolutionary change. The condition which the Cullom Committee found, and which continued into the present decade, is manifestly not present to-

day. The development of the highway instrumentality has not only introduced a competitor that is virtually omnipresent, but, through joint operations, has materially widened the range of competition of the older instrumentalities. It has become obvious that there is a substantial and controlling competition between highway, waterway, and railway instrumentalities. With the transformation of competition, a reconsideration of existing public controls appears to be desirable. Commission rate fixing and extensive authoritative controls have been necessary in the past, but are costly in both their direct administrative expense and their inflexibility. As the breadth and complexity of regulation increase, with its spread over new instrumentalities, these "costs" increase in marked degree. Extensive regulatory values may be found in competitive control of transportation, and, other things being equal, the maximum use of competitive controls, and a maximum reliance on private management, are in the public interest.

This conclusion will not pass unchallenged. An opinion of James C. Bonbright written in 1928 may appear to challenge the value of competitive controls:

We need still recognize that the attempt to carry over into the field of the large-scale monopoly the same price system that is assumed to prevail in the field of the small competitive enterprise, is bound to result in a serious misfit. One reason why it is a misfit is that the competitive price system disregards so ruthlessly the financial needs of the individual producer. . . . As long as

¹ Senate Report No. 46, 49th Cong., 1st Sess., p. 178.

competition is full and free this process, harsh though it may be to the unfortunate producer, may serve very well the interests of the consumer.²

The attempt through regulation to reproduce the conditions of competition in a large-scale monopolistic industry may be unwise, but the thesis is not pertinent to the present national transportation situation. The dominant place of the large transportation agency has been lost. Desirable coordination and combination will reduce the present large number of independent competing agencies but will not recreate the conditions that existed when one hundred railroad systems performed all but insignificant portions of the transportation service of the country. Furthermore, the competitive regulation of transportation rates will not *introduce* the harshness of competition into the transportation field. Even with effective commission control of rates, service competition can be as harsh and destructive as the worst of misdirected rate competition. The difficulty of applying authoritative rate fixing and of regulating service competition in an industry where vigorous competition exists creates strong support for a search for effective competitive controls. A revaluation of traditional rate controls in the light of changed conditions in the industry may reveal weaknesses in the authoritative control and strengths in the competitive control that have not been fully appreciated.

FACTORS IN REGULATORY POLICY

An evaluation of rate regulation must lead mainly into a study of railroad regulation and into consideration of the need and the propriety of apply-

ing such authoritative controls to the transportation system. Regulatory policy must be shaped to bring effective regulation to those carrier instrumentalities whose services are potentially interchangeable in the meeting of the shippers' demands for service. The failure to apply regulation over that jurisdiction will mean that the evils that are prevented in one field can exist without restraint in other fields. And further, the effectiveness of any form of control in one field will be nullified by the substitution of the services of inadequately controlled agencies whenever the immediate self-interest of the shipper suggests such substitution.

From a study of the current rate levels of the several instrumentalities and from a study of traffic diversion among these instrumentalities, it appears that the highway carrier, the rail carrier, and the coastal, intercoastal, and inland waterway carriers offer services that can be substituted to meet the shippers' demands for service. The preparation of a transportation policy must clearly give consideration to these carrier instrumentalities. Among these instrumentalities it appears feasible to exclude from consideration only bona fide private carriers—those exclusively serving industrial concerns through direct industrial ownership or through long-term lease. The sale of services of "public" carriers that solicit traffic in the open market—and this will include the services of many so-called contract carriers—must come under the regulation of whatever control is prepared for the industry. Such classification of carriers cannot be enlarged on here, although proper classification is essential to consideration of this problem, and has not yet been legislatively made. There is no evidence of a satisfactory principle of classification in the motor

² James C. Bonbright, "The Economic Merits of Original Cost and Reproduction Cost," *American Economic Review*, Vol. 18 (1928), p. 621-622.

carrier legislation of 1935, with its division of motor carriers into common, contract, and private carriers.

GENERAL RATE REGULATION

An evaluation of the existing authoritative control of the general level of rates in the transportation field will obviously concentrate attention on the regulation embodied in Section 15 (a) of the Interstate Commerce Act. This evaluation needs to be made in terms of the need for and the acceptability of the regulation for the transportation system comprised of the competing agencies operating on highways, waterways, and railways. Specific inquiry needs to be made into the economic acceptability of the objectives of the railroad regulation and the quality of the administrative mechanism provided.

In the 1919 Senate debates on railroad regulation, Senator Cummins proposed that Congress would find the ultimate solution to the earning problems of the carriers in consolidation which would group strong and weak roads in balanced systems.³ He observed that consolidation could not take place in any considerable degree for a number of years—complete consolidation probably not in less than ten or twelve years. An immediate rate policy was formulated and presented by the Senator in Section Six of the Senate bill. This section contained rate regulation substantially as it appeared in the Esch-Cummins Act. Senator Cummins insisted that it was necessary, in considering return of the railroad properties to the owners, to bear in mind that not only must past investors be treated fairly, but railroad credit must be sustained through a rate control that would assure a return on carrier property sufficient to attract added capital to the industry. He be-

lieved the 5½ per cent provided was larger than was needed, but stated his willingness to bow to the will of the Committee because he was “so much concerned in securing a bill which would make certain adequate facilities for the commerce of the country. . . .”

The Congressional purpose in preparing Section 15 (a) appears clearly to be the encouragement of investment in the railroad field on the part of private investors. The purpose is not altered by the 1933 amendment.⁴ In the *New England Divisions* case the Supreme Court observed this purpose in the rate-fixing control.⁵ In *United States v. Louisiana*, 1934, it held that intrastate rates must not be permitted to thwart “the broad purpose of Section 15 (a) to maintain an efficient transportation system through enabling the carriers to earn a fair return.”⁶

The accepted purpose of the rate-fixing control instituted in 1920 has been generally described in the terms “adequate facilities” or its corollary, “adequate service,” and in the related concept of a “fair return.” To Congress in 1920 these terms meant, respectively, an *increase* in railroad facilities and a return that would attract additional investment into the field. Senator Cummins was merely representing the currently accepted point of view when he insisted that the great need in the transportation field was increased transportation service:

I take it for granted that the chief desire of the American people is that their commerce may be supplied with adequate facilities for transportation. The country has suffered more in the last year on account of the inability of producers to reach their

⁴ Cf. I. C. C. Annual Report, 1933, p. 17-18.

⁵ 261 U. S. 184, 67L ed. 605, 43 Sup. Ct. Rep. 270.

⁶ 290 U. S. 70, 74-75.

³ *Congressional Record*, Vol. 59, Pt. 1, p. 135.

markets freely and promptly than from any other one cause, and while they want transportation at the lowest practicable cost, their overwhelming demand is for transportation itself.⁷

If the problem were only as simple as that! If the choice lay between having "transportation" and not having it, the decision would probably be easy. But the real problem centers in the question, How much of this service is desired? The last two statements in the above quotation suggest that the quantity of service which shippers want can be disassociated from the price which they must pay for that service. Unfortunately it cannot. It is true enough that, rather than be without some small amount of transportation service, shippers would pay almost any price; but the problem is to determine how much additional service buyers will pay for, at a price that will cover all the costs of performing that service.

It must be granted that in 1920 the relationship between the quantity of service shippers wanted and the price they would pay was, as Senator Cummins suggests, unimportant. The quantity of service demanded at prices approximating cost of the service had definitely outstripped the quantity that could then be produced. In the past decade that condition has clearly changed. Neither railroad facilities nor general transportation facilities over the country as a whole have been underdeveloped in the five years following 1930, nor do they appear to be inadequate to meet the probable demands of the next five years. Consideration of the future brings out the most serious complaint against the rate formula, namely, that it serves to obscure the condition of investment in the regulated field.

The condition of investment

In the competitive field of industry, prices tend to be fixed at the level at which sellers can move their current output. If overinvestment in facilities occurs, the product can be sold only at prices that do not yield the "going" rate of return on the investment. But the railroad rate formula is a price-fixing measure, so prices are not free to reveal the condition of investment. Clearly, before such a rate-making rule is acceptable, reliance must be placed on some assumption concerning the condition of investment in the field. If it can be assumed that the field is overinvested, a "fair return" must be one low enough to discourage new investment from entering the field, and, in time, bring about a withdrawal of some of the existing capital.⁸ On the other hand, if the industry is underinvested, a fair return is one that will be high enough to attract additional investment. Postwar conditions made this latter assumption tenable in 1920, but its present acceptability must be seriously in question. What actually was prepared in the rate-making rule appears no more than temporary legislation designed to meet the engrossing problem of postwar operations. Unfortunately it has been continued, without essential modification, as a general theory of rate making.

Review of the administration of the rate formula shows the regulatory authority finally appreciating, as Congress had not appreciated, the limits

⁸ Particularly as the result of changes in technology and the presence of accumulated obsolescence and depreciation in an industry, the entry of additional capital may lower the direct operating costs to a degree where the saving will pay the "going" rate of return on the added capital. In such circumstances the entry of additional capital into an overproduced field is economically desirable.

⁷ Cf. I. C. C. Annual Report, 1933, p. 17-18.

of any price-fixing power. Until the rise of competing transportation instrumentalities in the late years of the decade, the Commission was able to accept the Congressional mandate, and search for the lowest level of charges that promised to yield net returns that would attract investment.

Adequate facilities

It is certain that, even without the general decline in demand occasioned by the depression, the increase in transportation facilities in the railroads, the highways, and the waterways, would have brought to the Commission's attention the possibility that the rail carriers possessed facilities sufficient to supply the demand for service that would fall to them. Certainly by 1931 the Commission's concern in the *Fifteen Per Cent* case was not with the discovery of a rate level that would yield a return to the carriers sufficient to attract additional investment into the field. Its concern was with the discovery of a rate level that would permit the carriers to move as large a volume of traffic as seemed possible and would offer whatever support was possible to railway credit. Revenue that would attract additional investment was no longer of controlling importance. The Commission recognized that at least for the period of the depression, the full use of *existing* facilities was impossible unless the services were sold at destructively low rates.

Regardless of depression results, an industry that continues to operate under a formula that attracts additional capital must reach a stage of development in which it possesses adequate facilities. Further increase in the capacity to produce services would entail wasteful investment and rate instability as capacity increased beyond current demands for service. If the

field has taken more productive resources than it can use efficiently, the authoritative rate fixing offers no assistance to the discovery and correction of the condition. The regulatory body discovers the condition by its inability to follow the rate-fixing formula, and must adapt its price policy to the condition by ignoring the formula.

Extensive price fixing can be no more valuable in the regulation of the transportation system than it has been in railroad regulation. In the regulation of the competing highway, waterway, and railway carriers, the requisites of a sound price-fixing rule would be the same as those required in the railroad field; the condition of investment in each of the instrumentalities and in the transportation system as a whole should be revealed; provision should be made for the increase or decrease of facilities as proper economy demands. But general price fixing for the services of the transportation system would possess the same disabilities that it has been seen to possess in the railway field. Price fixing immediately prevents prices from performing the function they tend to perform in competitive industry of revealing whether an oversupply or an undersupply of service is being produced. No other guide is supplied. The regulatory authority attempting to apply such regulation over the transportation system would have to rely on the vague indications yielded by general business conditions and on the conflicting demands of interested parties for the required information respecting the adequacy of facilities.

THE REGULATION OF DISCRIMINATION

The Cullom Committee, whose report in 1885 stressed the need for legislation against discrimination, found

the waterways an ineffective competitor. The Committee observed that in the absence of regulation the rail carrier is "practically and actually the sole and final arbiter upon all disputed questions . . . as to whether rates are reasonable or unjust discrimination has been practiced."⁹ Competition existed between rail carriers, but only to create conditions of competition "at the great commercial centers and in favored localities and . . . for the large shippers who are able to take care of themselves."¹⁰

Until very recent years these same conditions existed. The typical railway encountered the competition of other rail carriers and other instrumentalities at many points. However, there remained a large part of the traffic that was solicited under non-competitive conditions. These circumstances placed heavy demands on the authoritative control. Rates at non-competitive points must be controlled to prevent the establishment of monopoly charges and the subsequent evil of discrimination. Reliance was in large part placed on rate comparisons in preference to the alternative of tremendously burdensome rate fixing at all the non-competitive points. In general, the carrier's charge for a service rendered a particular region or a particular commodity was made to conform to the rate extended to other regions or other commodities demanding similar service. In this fashion reasonable rates for non-competitive points were established by forced conformance to rates established under competitive conditions. The prohibition of discrimination thus served to lessen the burden of extensive price fixing demanded by the widespread weakness of competitive regulation.

⁹ Senate Report No. 46, 49th Cong., 1st Sess., p. 176.

¹⁰ *Ibid.*, p. 178.

Competition and discrimination

This use of discrimination prohibitions was extended to the major competitor of the rail carriers in the Motor Carrier Act of 1935.¹¹ In this extension Congress sought some solution for the untenable position in which the rail carriers had been placed by regulation. That the best available solution is to be found in that policy is questionable. Probably for the first time in the history of transportation in the United States, actual and potential competition exists in sufficient degree to make questionable the advisability of reliance on authoritative prohibitions of discrimination.

Competition that is vigorous and extensive does not itself create uneconomic discrimination. Where discrimination does appear in competitive circumstances, it arises out of faulty control of supply in some portions, but not in all portions, of the industry. For example, if overinvestment in transportation facilities exists in some markets but not in others, the services in the oversupplied market can be sold only at discriminately low rates. If all portions of the industry are properly adjusted to demand for the services, there exists no reason for the appearance of discrimination. If any portion is overproducing or underproducing transportation services, discriminately high or discriminately low rates will appear and will tend to correct the faulty condition. Such rates are reasonable per se, and do not give rise to uneconomic discrimination.

Despite the strides competition has made in the past decade, single transportation agencies still serve many markets or many of the products of a market. Admittedly, under such circumstances the shipper will need pro-

¹¹ Interstate Commerce Act, Pt. II, Sec. 216 (d).

tection against the monopoly power of the transportation agent. It appears that the authoritative control of maximum rates for traffic solicited under non-competitive conditions, and the competitive determination of rates for the mass of traffic, comprise an effective rate control that will not be assisted by statutory prohibitions of locality and commodity discrimination. Competitive developments in the transportation field not only increase the feasibility of competitive regulation of rates, but for several reasons render authoritative control of discrimination less valuable for the regulation of transportation than it was formerly for railroad regulation.

Weaknesses of discrimination regulation

First, discrimination regulation makes a material contribution to the regulation of an industry only when the typical business unit is large. The value of discrimination regulations for the transportation system lies in the use of rate comparisons for the determination of reasonable rates for non-competitive traffic. These comparisons can be of importance only where the typical transportation agency serves a large number of markets. For the existence of discrimination, the one agency must participate in both rates out of which the claim of discrimination grows. Where a single agency serves a large number of commodities and a large number of markets, a wide range of rate comparisons is available to provide a check on unreasonable rates. Rate comparisons were available as a very effective rate control when a few large railway agencies comprised the transportation system. As presently constituted, the transportation system contains a large number of independent agencies. Frequently, where competition does

not exist to set reasonable rates, the traffic will be served by a single agency that may well set up no rates for other areas or other commodities from which rate comparisons can be made. The whole burden of rate regulation in this case will be thrown on the rate-fixing power of the regulatory body.

Second, the application of discrimination prohibitions to an industry composed of a few large operators and many small operators will bring undesirable results in the form of rate cutting and rate instability. In a competitive market the would-be price cutter tends to be restrained by the knowledge that his action in cutting prices below an economic level would bring similar action from other producers. The results would be unprofitable to all. But discrimination provisions, by reducing the ability of the large operator to meet price cutting in one market, tend to encourage price cutting by small operators who are outside the reach of the discrimination prohibitions. At the best, the continuation and extension of the prohibitions of place and commodity discrimination will throw a severe burden on the minimum rate control. At the worst, instability and irresponsible operation will create impossible conditions for the transportation industry and for the shipper.

The growth of competition in the transportation system and the faults of authoritative control of discrimination provide strong support for public reliance on competitive regulation. Even where competition does not exist, the discrimination prohibition appears of little value; where a single agency, for example a highway carrier, serves one producing area, locality discrimination does not arise; personal discrimination will be readily prevented by requirements concerning the adherence to published rates; and com-

modity discrimination in the final analysis involves a determination of rate reasonableness that can be better attacked directly through the authoritative control of maximum rates.

It is true that where an agency is the sole transportation means serving two or more areas, the prohibition of place, commodity, and personal discrimination would be of assistance to the authoritative regulation of maximum rates which is required by the monopoly condition. However, the serious disabilities that attach to necessarily general prohibitions of personal, commodity, and place discrimination, and the pervasiveness of competition, appear to supply adequate warrant for reliance on maximum rate regulation and the elimination from regulation of the authoritative prohibitions of discrimination.

The potentialities of such policy merit extended examination, and there is danger at this time that consideration will not be given to it. Railway proponents will be inclined to rest content with the results of the highway legislation of 1935. The interest of highway operators will probably be concentrated on the administration of the present policy rather than on the needed reconsideration of the merits of the policy.

THE CONTROL OF INVESTMENT

The experiences of the past few years may not create confidence in the competitive regulation of transportation. But destructive rate cutting and rate instability cannot properly be viewed as products of competition. In part, these faults arose from the inequalities that existed in regulation; in part, from depression conditions; and in part, from a technical revolution in transportation that introduced the highway instrumentality to a com-

pletely new place in the transportation scheme of the country.

The appearance of the highway competitor created a tremendous increase in transportation facilities. Destructive rate cutting followed when transportation agencies found that their capacity to produce far exceeded the quantity of the service that shippers would buy at "reasonable" rates. However, it must be recognized that the oversupply of facilities responsible for rate and service instability is not an essential attribute of competition, but was merely the result of the appearance and the early development of a new instrumentality. In periods of dynamic change no control—neither governmental nor competitive—will prevent maladjustments that seriously disturb the industry.

Competition itself cannot fairly be blamed for the transportation condition of the past five years. Nevertheless, it is true that competitive direction of large-scale industry has frequently resulted in an excessive duplication of fixed equipment. As a result, prices decline and invested values are lost until the faulty condition corrects itself. The willingness of producers to sacrifice their capital in uneconomic investment may not be of public concern generally. However, in the transportation field the effects of overproduction in the form of rate instability and the probable deterioration of the quality of service appear, in view of the importance of the industry, to justify the creation of public aids for the competitive control.

It should be apparent that the traditional rate regulation offers no satisfactory control. Such regulation assumes that the supply of transportation service, the factor that most needs control, is already properly adjusted. It would seem reasonable to focus the public control directly on the condition

needing control—the supply of investment and the consequent capacity to produce transportation services. When capacity is properly developed, all but the least efficient producers in the field possess the ability to sell the services they can produce at rates that are sufficient to cover costs. Efficient production, and stable, non-discriminatory rates, will follow as a matter of course.

To control the supply of transportation service it would be necessary to add specific content to the finding of public convenience and necessity required as sanction for any increase in the productive capacity of the industry. The purpose of the control would be the prevention of dangerous overproduction that might occur under unrestrained competitive guidance of the industry. Dangerous overproduction may be discerned when there is any considerable decline in the productivity of investment in the regulated field below that which is normal for the general field of competitive industry.

When the return being earned on the values invested in a transportation instrumentality in an area is definitely below the “going” rate of return, any increased capacity from added investment is not only wasteful but will create the feared instability of competitively determined rates. Under such conditions the regulatory authority would refuse the required certificate.¹²

Administrative requirements

The administrative requirements of such control would be twofold. First, would be the determination of the percentage return which would be ac-

cepted as a sign that further investment in the instrumentality concerned was against the public interest. The return would lie somewhere between, say, 5.5 per cent and the return necessary to cover the fixed obligations of the instrumentality in the area. The discretion of the regulatory body might be invoked to fix the definite percentage inside some such stated limits.

The second administrative requirement would be the reproduction cost valuation of the present investment in each instrumentality, estimated at current normal price levels. Such valuation is readily available for the rail carriers, and similar valuation would have to be made for the highway and waterway carriers. Though this latter task would be tremendously simpler than valuation of the rail carriers has been, it is impossible to deny that the control of supply would entail heavy duties for the administrative authority. However, if it can be assumed that unrestricted competitive control of transportation is not acceptable, the control is superior to the only alternative—authoritative fixing of the level of rates for the competing railway, highway, and waterway instrumentalities.¹³

The dominant characteristic of the transportation industry appears to be the competition that has recently pervaded the whole industry. The task of administrative rate fixing is made markedly difficult by that competition. The relationship of the rates of the agencies comprising the competing instrumentalities is of paramount importance to the private operator. When the success or the failure of com-

¹² Where overproduction of capacity exists, the entry of additional capital may be economically justified when it is used to effect a more efficient use of existing facilities. Justification would be apparent for capital required for connecting lines, for cost-reducing technical changes, and for working capital.

¹³ In terms of the administrative problem, government operation of the industry offers no additional alternative. Under government operation, whatever end was sought, the means available would be either government rate fixing or some form of direct control of supply.

peting agencies and instrumentalities may be determined in an administrative tribunal, the frequency with which the authoritative control is invoked, and the difficulty of establishing proper rate relations, will throw extreme burdens on the administrative authority. Such control appears essentially inconsistent with the preservation of private ownership and operation of the industry. The inconsistency will manifest itself in an excessive regulatory burden. The proposed control of supply presents itself as an authoritative assistance wholly subordinate to the competitive control. Only when private enterprise persists in the attempt to increase transportation facilities in the face of discouragingly low returns does the control restrict the discretion and invalidate the judgment of the enterpriser. In general, the control identifies itself with the interest of the transportation operator in the successful operation of his business, and with the interest of the shipper in an adequate transportation service and in rate stability.¹⁴

CONCLUSION

In conclusion it should be observed briefly that certain traditional controls may be advantageously continued and extended in use. Publication and adherence requirements have been laid on the rail carriers in the past and are necessary to an open and informed competition. Shippers are thereby promised a certain measure of stability in rates, and personal discrimination is effectively controlled. In addition, the knowledge necessary to an intelligent choice is made available to ship-

pers. Adequate provision has been made for publicity for the rates of common carriers by highway in the Motor Carrier Act of 1935. For the contract carrier, only publicity of minimum rates is required. Where the contract carrier is in actuality a "public" carrier, the limited requirement is not adequate. Publicity for the charges of the inland waterway carrier is needed, and the publication of actual in place of maximum rates should be demanded of the coastal common carrier.

Maximum rate regulation is now applied unevenly over the competing carriers that make up the present national transportation system. However, the danger of monopoly charges is so small that extension of the control is not needed for the protection of the shipper. On the other hand, the restricted scope of the minimum rate control demands attention. With intelligent competitive control of transportation supported by an effective control of supply, destructive rate cutting should not appear. For the present the minimum rate control may be needed, although after the industry adjusts itself to the presence of the highway carrier, the demands made on the control will be small. At this point, granting that there is value in commission control of minimum rates, we certainly must recognize that minimum rate regulation for railway and highway carriers in many regions is meaningless and useless as long as coastal, intercoastal, and inland waterway carriers may reduce rates at will.

Experience should show that the profit seeking of private management, once freed from extensive restraint, will produce adequate service at reasonable and non-discriminatory rates. The interest of the shipper seems ably safeguarded by the presence of competing carriers. If the competitive control appears unable to prevent

¹⁴ For an excellent theoretical analysis to which the foregoing argument owes a material debt, see Bruce Winton Knight, "Control of Investment versus Control of Return in the Regulation of Natural Monopolies," *Quarterly Journal of Economics*, XLIV (1930), p. 263-285.

overinvestment in transportation facilities, then some control of supply must be invoked to prevent rate instability that is injurious to the operator and to the shipper.

In the preparation of transportation regulation, little consideration has been given to the current potentialities of competition. In part, that neglect is a result of the failure to recognize the proper jurisdiction of regulation and the unequal restraints imposed on private management in the several transportation fields. Public regulation of

transportation did not keep pace with the revolutionary change in transportation techniques. The resulting competitive disorder was merely symptomatic, but was frequently accepted as proof of a functional failure. In addition, the phenomenon of a forceful and widespread competition is new, and the necessary reconsideration of the essentials of regulatory policy is politically retarded by its difficulty. The piecemeal extension of traditional controls will always appear more practicable.

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